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In re Application of
RETTENMAEIR, Josef, Otto
U.S. Application No.: 09/380,739
PCT No.: PCT/DE98/00589
International Filing Date: 28 February 1998
Priority Date: 11 March 1997
Attorney's Docket No.: 017309/0172
For: LAUNDRY DETERGENT COMPACT
WHICH DISINTEGRATES IN LIQUID

DECISION ON
PETITION UNDER
37 CFR 1.48(a)

This decision is issued in response to the "Petition Under 37 CFR 1.48(a)" filed on 05 May 2000. Applicants have paid the required petition fee.

BACKGROUND

On 28 February 1998, applicant filed international application PCT/DE98/00589 which claimed a priority date of 11 March 1997 and which designated the United States. On 17 September 1998, a copy of the international application was transmitted to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB").

On 02 September 1998, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of nineteen months from the priority date. As a result, the deadline for submission of a copy of the international application (unless previously communicated by the IB) and payment of the basic national fee was extended to expire thirty months from the priority date, i.e., 13 September 1999 (11 September 1999 was a Saturday).

On 13 September 1999, applicant filed a transmittal letter for entry into the national stage in the United States which indicates that it was accompanied by, among other materials: (1) a translation into English of the international application, and (2) a check for the \$840 basic national fee. The transmittal letter noted that the international application had already been transmitted by the IB.

On 10 December 1999, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 and a surcharge for providing the oath or declaration later than 30 months from the priority date were required. The Notification also informed applicant that the failure to submit these materials within one month of the date of the Notification would result in abandonment of the application.

On 15 December 1999, applicant filed a response to the Notification Of Missing Requirements which included a check for the \$130 surcharge and a declaration executed by five persons identified as inventors (Josef Otto Rettenmaier, Hans-Friedrich Kruse, Martin Holl, Harald Schlosser, and Armin Ungerer). However, Mr. Rettenmaier is the only inventor identified on the published international application.

On 07 February 2000, the DO/EO/US mailed a Notification Of A Defective Response (Form PCT/DO/EO/916) and a Notification Of A Defective Oath Or Declaration (Form PCT/DO/EO/US/917) which indicated that the declaration filed on 15 December 1999 was defective because it identified inventors not included in the international application.

On 05 May 2000, applicant filed the petition considered herein, which seeks to correct the inventorship on this application so as to include the additional inventors identified on the declaration filed 15 December 1999. Included with this petition was a request for a four-month extension of time to respond to the Notification Of Missing Requirements, including the appropriate fee for such an extension. Based on this extension of time, the present petition is considered timely filed.

DISCUSSION

A petition under 37 CFR 1.48(a) to correct an error in naming inventorship requires: (1) a petition including a statement from each person being added or deleted as an inventor that the error in inventorship occurred without any deceptive intention on his or her part; (2) an oath or declaration by the actual inventor(s) as required by 37 CFR 1.63; (3) the fee set forth in 37 CFR 1.17(I); and (4) if an assignment has been executed by any of the original named inventors, the written consent of the assignee in compliance with 37 CFR 3.73(b). As discussed below, applicants have satisfied items (1), (2), and (3), but have failed to satisfy item (4).

Regarding item (1), applicants have submitted a statement executed by the four added inventors (Hans-Friedrich Kruse, Martin Holl, Harald Schlosser, and Armin Ungerer) which states that "the omission of my name as an inventor in the PCT application was an error without any deceptive intention on my part." Item (1) is therefore satisfied.

Regarding item (2), the declaration filed on 15 December 1999 satisfies the requirements of 37 CFR 1.497(a) and (b) and is executed by all five inventors. Item two is therefore satisfied.

Regarding item (3), applicants have provided a check for the petition fee required under 37 CFR 1.17(I). Item (3) is therefore satisfied.

Regarding item (4), applicants have submitted statements executed on behalf of two purported assignees (J.Rettenmaier & Sonne GmbH+Co and Henkel KGaA) in which the purported assignees gives consent to the addition of four inventors. However, as noted above, the consent of an assignee must be provided "in compliance with 37 CFR 3.73(b)." (See MPEP section 324, and form PTO/SB/96). The statements submitted here do not satisfy 37 CFR 3.73(b). Accordingly, item (4) has not been complied with.

Because applicants have failed to satisfy all the requirements for a grantable petition under 37 CFR 1.48(a), the petition cannot be granted in its present form. The declaration submitted on 15 December 1999 therefore remains defective.

CONCLUSION

The Petition To Add Inventors Under 37 CFR 1.48(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.48(a)." No additional petition fee is required. Failure to file a timely and proper response will result in abandonment of the application.

Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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